

Circuit Court for Prince George's County  
Case No. 170768X

UNREPORTED  
IN THE COURT OF SPECIAL APPEALS  
OF MARYLAND

No. 2266

September Term, 2018

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MARCEL BILLUPS

v.

STATE OF MARYLAND

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Wright,  
Kehoe,  
Moylan, Charles E., Jr.  
(Senior Judge, Specially Assigned),

JJ.

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PER CURIAM

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Filed: September 26, 2019

\*This is an unreported opinion, and it may not be cited in any paper, brief, motion, or other document filed in this Court or any other Maryland Court as either precedent within the rule of stare decisis or as persuasive authority. Md. Rule 1-104.

A jury, in the Circuit Court for Prince George’s County, convicted Marcel Billups, appellant, of criminally negligent manslaughter, reckless driving, negligent driving, failure to control speed to avoid a collision, and driving in excess of a reasonable and prudent speed. Mr. Billups was sentenced to a total term of three years’ imprisonment, with all but two years suspended. In this appeal, Mr. Billups asks whether the evidence presented at trial was sufficient to sustain his conviction of criminally negligent manslaughter. For reasons to follow, we affirm.

### **BACKGROUND**

On June 2, 2016, at approximately 10:56 p.m., Mr. Billups was driving his GMC Yukon on an on-ramp heading eastbound onto Route 50 when his vehicle struck a guardrail, became airborne, flew into the lane of traffic heading westbound, and struck another vehicle, killing that vehicle’s driver. Mr. Billups was later arrested and charged.

At trial, Charles Merritt testified that, at the time of the accident, he was driving eastbound on Route 50 when he saw Mr. Billups’s GMC Yukon “coming off the ramp onto 50,” at which point Mr. Billups’s vehicle “swerved back and forth and lost control, hit the guardrail, went up in the air and hit the oncoming car.” That vehicle, a Cadillac SRX, was being driven by Irene Cornelius, the victim. Mr. Merritt then stopped his vehicle, got out, and went over to Mr. Billups’s vehicle, where he observed Mr. Billups inside of the vehicle “bleeding all over the place.” Mr. Merritt also observed that Mr. Billups “had altered mental status” and “didn’t really know what was going on.” Mr. Merritt then observed that another vehicle, a Chevy Aveio, had also sustained damage as a result of the accident.

Maryland State Police Trooper Jason Hill testified that he responded to the scene of the accident and encountered Mr. Billups, who at that point was sitting in an ambulance that had arrived on the scene. When Trooper Hill tried to speak to Mr. Billups, Mr. Billups appeared “incoherent” and “couldn’t really speak.” According to Trooper Hill, Mr. Billups’s “speech was slurred” such that the officer “couldn’t understand a lot of words he was saying.”

Maryland State Police Trooper Samuel Jackson testified that he also reported to the scene of the accident. Trooper Jackson stated that he “was requested to bring a blood kit to the scene” because “they believed the driver of one of the vehicles was impaired.” Trooper Jackson eventually obtained a sample of Mr. Billups’s blood, which was then sent for testing.

Wayne Shu, a forensic scientist with the Maryland State Police, testified that he tested Mr. Billups’s blood sample and that the sample came back positive for phencyclidine, or PCP, a controlled dangerous substance. On cross-examination, Mr. Shu explained that the test he used on Mr. Billups’s blood sample was a “qualitative test,” which makes “a determination that something is present,” as opposed to a “quantitative test,” which makes “the determination as to how much of the something is present.”

Maryland State Police Corporal Justin Zimmerman testified as an expert in the area of collision analysis and reconstruction. Corporal Zimmerman testified that he investigated the scene of the accident shortly after the accident occurred and determined that three vehicles, Mr. Billups’s GMC Yukon, the victim’s Cadillac SRX, and a Chevy Aveio, had

been involved in the accident and that Mr. Billups’s vehicle was “at fault.” Corporal Zimmerman explained that, just prior to the accident, Mr. Billups’s vehicle “came off the exit ramp” and “started to lose control,” leaving “tire marks” in the road. Mr. Billups’s vehicle then struck the guardrail “head-on,” went “airborne,” and landed “on the Cadillac, on the driver’s side, fatally injuring the driver.” Corporal Zimmerman testified that, at the time of the accident, there “was no rain” and the “roadway was dry.” Corporal Zimmerman concluded that road and weather conditions did not contribute to the crash.

Corporal Zimmerman testified that, following his investigation at the scene, he obtained a report from the “crash data retrieval system” in Mr. Billups’s vehicle, which, according to Corporal Zimmerman, “captures crash data” that “can be used in a crash investigation.” Per that report, Mr. Billups’s vehicle was traveling 71 miles per hour, or 16 miles per hour over the posted speed limit of 55 miles per hour, “with 100 percent throttle,” five seconds prior to striking the guardrail. The report also indicated that the vehicle’s brake system was engaged four seconds prior to the crash, was disengaged for the next two seconds, and then was reengaged one second prior to the crash.

### **DISCUSSION**

Mr. Billups contends that the evidence adduced at trial was insufficient to sustain his conviction of criminally negligent manslaughter by vehicle. Specifically, Mr. Billups contends that the State failed to prove that he drove his vehicle in a criminally negligent manner.

“The test of appellate review of evidentiary sufficiency is whether, ‘after viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt.’” *Donati v. State*, 215 Md. App. 686, 718 (2014) (citing *State v. Coleman*, 423 Md. 666, 672 (2011)). That standard applies to all criminal cases, “including those resting upon circumstantial evidence, since, generally, proof of guilt based in whole or in part on circumstantial evidence is no different from proof of guilt based on direct eyewitness accounts.” *Neal v. State*, 191 Md. App. 297, 314 (2010). Moreover, “[t]he test is ‘not whether the evidence *should have or probably would have* persuaded the majority of fact finders but only whether it *possibly could have* persuaded *any* rational fact finder.’” *Painter v. State*, 157 Md. App. 1, 11 (2004) (citations omitted) (emphasis in original). In making that determination, “[w]e ‘must give deference to all reasonable inferences [that] the fact-finder draws, regardless of whether [we] would have chosen a different reasonable inference.’” *Donati*, 215 Md. App. at 718 (citing *Cox v. State*, 421 Md. 630, 657 (2011)). In so doing, “[w]e defer to the fact finder’s ‘opportunity to assess the credibility of witnesses, weigh the evidence, and resolve conflicts in the evidence[.]’” *Neal*, 191 Md. App. at 314 (citations omitted).

Criminally negligent manslaughter by vehicle is proscribed by § 2-210(b) of the Criminal Law Article of the Maryland Code, which states that “[a] person may not cause the death of another as the result of the person’s driving, operating, or controlling a vehicle or vessel in a criminally negligent manner.” A person acts in a criminally negligent manner

when: “(1) the person should be aware, but fails to perceive, that the person’s conduct creates a substantial and unjustifiable risk that such a result will occur; and (2) the failure to perceive constitutes a gross deviation from the standard of care that would be exercised by a reasonable person.” Md. Code, Crim. Law § 2-210(c). Thus, in order to sustain a conviction for criminally negligent manslaughter by vehicle, the State must establish that a defendant’s “conduct created a substantial and unjustifiable risk of death” and that “his failure to perceive this risk was a gross deviation from the standard of care that would be exercised by a reasonable person.” *Beattie v. State*, 216 Md. App. 667, 685 (2014). Factors relevant in that assessment include:

(a) drinking; (b) failure to keep a proper lookout and to maintain proper control of the vehicle; (c) excessive speed under the circumstances; (d) flight from the scene without any effort to ascertain the extent of the injuries; (e) the nature and force of impact; (f) unusual or erratic driving prior to impact; (g) the presence or absence of skid marks or brush marks; (h) the nature of the injuries and the damage involved to the vehicle or vehicles; [and] (i) the nature of the neighborhood, the environment where the accident took place.

*Plummer v. State*, 118 Md. App. 244, 256 (1997) (alterations and emphasis removed).<sup>1</sup>

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<sup>1</sup> To be sure, the crime at issue in *Plummer* was manslaughter by automobile, which is distinct from the crime of criminally negligent manslaughter by vehicle and requires a showing of “gross negligence” rather than “criminal negligence.” *Plummer*, 118 Md. App. at 254-56; *See also Beattie*, 216 Md. App. at 681-82 (discussing the two standards). That said, the only notable distinction between the two standards is that gross negligence includes a *mens rea* element, namely, that the defendant was conscious of the risk to human life, whereas criminal negligence omits that element and instead requires a showing that the defendant should have been aware of the risk but failed to perceive it. *Beattie*, 216 Md. App. at 681-82; *See also* 96 Op. Md. Att’y Gen. 128 (comparing the elements of gross negligence and the elements of criminal negligence, within the context of vehicular manslaughter). Moreover, gross negligence carries a higher degree of culpability than criminal negligence. 96 Op. Md. Att’y Gen. 128.

We hold that the evidence adduced at trial, when viewed in a light most favorable to the State, was sufficient to sustain Mr. Billups’s conviction. That evidence showed that, in the seconds leading up to the crash, Mr. Billups was driving his GMC Yukon “with 100% throttle” on the on-ramp to a major highway while “swerving” and traveling 16 miles per hour over the posted speed limit. The evidence further showed that, although Mr. Billups did engage the vehicle’s brake system before striking the guardrail, he did so only intermittently. As a result of those circumstances, and despite the fact that the road and weather conditions were unlikely to have adversely affected his ability to drive, Mr. Billups lost control of his vehicle and struck the guardrail with such force that the vehicle became airborne, flew into the opposite travel lane, and landed on another vehicle, killing that vehicle’s driver.

Moreover, a reasonable inference can be drawn that Mr. Billups was under the influence of PCP at the time of the crash. One of the responding officers testified that, immediately following the accident, Mr. Billups appeared “incoherent” and was having trouble speaking. The officer further testified that Mr. Billups’s speech was slurred and that the officer “couldn’t understand a lot of words he was saying.” Another responding officer testified that he obtained a blood sample from Mr. Billups because “they believed the driver of one of the vehicles was impaired.” That sample later tested positive for PCP. Although the presence of PCP in Mr. Billups’s blood did not definitively establish that he was under the influence of a narcotic at the time of the crash, other evidence supported that conclusion. *See White v. State*, 142 Md. App. 535, 548 (2002) (noting that, in the absence

of evidence establishing a defendant’s blood-alcohol level, “intoxication can also be proven by other evidence from which the jury could infer that a defendant was intoxicated, such as evidence of a defendant’s demeanor at the time of the stop.”).

From those facts, a reasonable inference could be drawn that Mr. Billups, while under the influence of PCP, drove his vehicle recklessly and in excess of the speed limit and that, as a result, he lost control of the vehicle, which then struck the guardrail with such force that the car became airborne, flew into oncoming traffic, and landed on another vehicle, killing that vehicle’s driver. Thus, a reasonable fact-finder could have concluded that Mr. Billups’s conduct created “a substantial and unjustifiable risk” of death and that his failure to perceive that risk constituted “a gross deviation from the standard of care that would be exercised by a reasonable person.” Accordingly, the evidence was sufficient to sustain Mr. Billups’s conviction of criminally negligent manslaughter by vehicle.

**JUDGMENTS OF THE CIRCUIT COURT  
FOR PRINCE GEORGE’S COUNTY  
AFFIRMED; COSTS TO BE PAID BY  
APPELLANT.**